

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Sep 23, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROBERT L.,

Plaintiff,

v.

MARTIN O'MALLEY,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:23-CV-3051-JAG

ORDER GRANTING  
PLAINTIFF'S MOTION  
TO REVERSE THE DECISION  
OF THE COMMISSIONER

**BEFORE THE COURT** are Plaintiff's Opening Brief and the Commissioner's Brief in response. ECF Nos. 10, 15. Attorney D. James Tree represents Robert L. (Plaintiff); Special Assistant United States Jacob Phillips represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before the undersigned by operation of Local Magistrate Judge Rule (LMJR) 2(b)(2), as no party returned a Declination of Consent Form to the Clerk's Office by the established deadline. ECF No. 5.

After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's motion to reverse the decision of the Commissioner, **DENIES** Defendant's motion to affirm, and **REMANDS** the matter for further proceedings under sentence four of 42 U.S.C. § 405(g).

## I. JURISDICTION

Plaintiff filed applications for benefits on August 18, 2020, and September 9, 2020, alleging disability since May 5, 2020. The application was denied initially and upon reconsideration. Administrative Law Judge (ALJ) C. Howard Prinsloo held a hearing on January 11, 2022, and issued an unfavorable decision on May 11, 2022. Tr. 21-35. The Appeals Council denied review on January 27, 2023. Tr. 1\_6. Plaintiff appealed this final decision of the Commissioner on April 18, 2023. ECF No. 1.

## II. STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th

1 Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set  
 2 aside if the proper legal standards were not applied in weighing the evidence and  
 3 making the decision. *Browner v. Sec’y of Health and Human Services*, 839 F.2d  
 4 432, 433 (9th Cir. 1988).

### 5 **III. SEQUENTIAL EVALUATION PROCESS**

6 The Commissioner has established a five-step sequential evaluation process  
 7 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
 8 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). At steps one through  
 9 four, the claimant bears the burden of establishing a prima facie case of disability.  
 10 *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a  
 11 physical or mental impairment prevents the claimant from engaging in past  
 12 relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot  
 13 perform past relevant work, the ALJ proceeds to step five, and the burden shifts to  
 14 the Commissioner to show: (1) the claimant can make an adjustment to other  
 15 work; and (2) the claimant can perform other work that exists in significant  
 16 numbers in the national economy. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.  
 17 2012). If a claimant cannot make an adjustment to other work in the national  
 18 economy, the claimant will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v),  
 19 416.920(a)(4)(v).  
 20

### 21 **IV. ADMINISTRATIVE FINDINGS**

22 On May 11, 2022, the ALJ issued a decision finding Plaintiff was not  
 23 disabled as defined in the Social Security Act. Tr. 21-35.

24 At *step one*, the ALJ found Plaintiff had not engaged in substantial gainful  
 25 activity since May 5, 2020, the alleged onset date. Tr. 24.

26 At *step two*, the ALJ determined Plaintiff had the following severe  
 27 impairments: tachycardia, orthostatic hypotension, cirrhosis, thrombosis, and portal  
 28 hypertension. Tr. 24.

1 At *step three*, the ALJ found these impairments did not meet or equal the  
2 requirements of a listed impairment. Tr. 26.

3 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and  
4 determined Plaintiff could perform light work subject to the following additional  
5 limitations: "He can only occasionally climb ladders, ropes, and scaffolds, kneel,  
6 crouch, and crawl. He must avoid concentrated exposures to workplace hazards,  
7 such as moving machinery and unprotected heights, and can only occasionally  
8 balance due to dizziness." Tr. 27-28.

9 At *step four*, the ALJ found Plaintiff could perform past relevant work as a  
10 retail salesclerk and a fast-food shift manager. Tr. 33.

11 Alternatively, at *step five*, the ALJ found there are jobs that exist in  
12 significant numbers in the national economy that the claimant could perform, to  
13 include housekeeper janitor, bench assembler, and hand packager. Tr. 34.

14 The ALJ thus concluded Plaintiff was not disabled from the alleged onset  
15 date through the date of the decision. Tr. 35.

## 16 V. ISSUES

17 The question presented is whether substantial evidence supports the ALJ's  
18 decision denying benefits and, if so, whether that decision is based on proper legal  
19 standards.

20 Plaintiff raises the following issues for review: (A) whether the ALJ erred  
21 by discounting Plaintiff's symptom allegations; (B) whether the ALJ erred at step  
22 two; and (C) whether the ALJ erred at step three. ECF No. 10 at 2.

## 23 VI. DISCUSSION

### 24 A. Plaintiff's Symptom Allegations.

25 Plaintiff contends the ALJ erroneously discounted his symptom allegations.  
26 ECF No. 10 at 9-17. Where, as here, the ALJ determines a claimant has presented  
27 objective medical evidence establishing underlying impairments that could cause  
28

1 the symptoms alleged, and there is no affirmative evidence of malingering, the  
2 ALJ can only discount the claimant's testimony as to symptom severity by  
3 providing "specific, clear, and convincing" reasons supported by substantial  
4 evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). The Court  
5 concludes the ALJ failed to offer clear and convincing reasons to discount  
6 Plaintiff's allegations.

7 The ALJ noted Plaintiff alleged, among other things, "he suffers from  
8 chronic pain, chronic fatigue, the need to use a cane or walker, and difficulty to  
9 walk, stand, use the stairs, bend, pick things up from ground, balance, and sustain  
10 gain activity [*sic*]." Tr. 28. The ALJ further noted that Plaintiff's representative  
11 asserted at the hearing that Plaintiff "would require several unscheduled breaks and  
12 not be able to sustain a consistent work schedule." Tr. 28.

13 The ALJ largely discounted Plaintiff's allegations as inconsistent with the  
14 medical evidence. Tr. 29-31. However, the ALJ's findings on this score do not  
15 reasonably undermine Plaintiff's specific allegations. For example, the ALJ noted  
16 Plaintiff "regularly demonstrate[d]" on examination "normal, steady gait,"  
17 "normal/near normal strength and/or without weakness," "intact sensation of the  
18 extremities and/or without numbness," "no areas of focal weakness," "decreased  
19 muscle bulk but normal muscle tone," "normal reflexes," and "no signs of  
20 significant cyanosis, deformities, swelling or edema of the extremities, axilla, neck,  
21 and groin." Tr. 30. The ALJ also noted, among other things, Plaintiff typically  
22 presented as "alert, oriented, pleasant, well-appearing, and in no acute distress" to  
23 his medical providers. Tr. 30.

24 These findings do not reasonably undermine Plaintiff's specific allegations  
25 of chronic pain and fatigue, movement difficulties, and break requirements. While  
26 an ALJ may reject a claimant's symptom testimony when it is contradicted by the  
27 medical evidence, *see Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155,  
28

1 1161 (9th Cir. 2008), the ALJ must explain how the medical evidence contradicts  
2 the claimant's testimony, *see Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993);  
3 *see also Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014). The ALJ did not  
4 do so here. The ALJ thus erred by discounting Plaintiff's allegations on this  
5 ground.

6 Second, the ALJ discounted Plaintiff's allegation on the ground Plaintiff  
7 improved with treatment. Tr. 30-31. As above, the ALJ failed to meaningfully  
8 connect the evidence cited to Plaintiff's specific allegations. Instead, the ALJ  
9 listed seriatim medical evidence describing a variety of Plaintiff's conditions –  
10 none sufficiently undermining or addressing Plaintiff's allegations. *Cf. Garrison v.*  
11 *Colvin*, 759 F.3d 995, 1017 n.23 (9th Cir. 2014) (“There can be a great distance  
12 between a patient who responds to treatment and one who is able to enter the  
13 workforce.”) (quoting *Scott v. Astrue*, 647 F.3d 734, 739–40 (7th Cir. 2011)). The  
14 ALJ thus erred by discounting Plaintiff's allegations on this ground.

15 Third, the ALJ discounted Plaintiff's allegations on the ground Plaintiff “has  
16 not been in full compliance with his treatment plan.” Tr. 31. The ALJ's finding  
17 lacks substantial evidentiary support. Notably, the Commissioner implicitly  
18 declined to defend the ALJ's finding in this regard. The ALJ thus erred by  
19 discounting Plaintiff's allegations on this ground.

20 Finally, the ALJ discounted Plaintiff's allegations on the ground Plaintiff did  
21 not appear at his hearing: “The claimant also failed to appear that the scheduled  
22 hearing. By choosing not to show up to the hearing, he missed the opportunity to  
23 testify about how his impairments cause significant limitations in his abilities to  
24 perform activities of daily living, and to sustain any full-time work.” Tr. 31. This  
25 was error. Plaintiff's attendance at the hearing was not mandatory. *See, e.g.,*  
26 HALLEX I-2-4-25(D)(2)(b). In defense of the ALJ's finding, the Commissioner  
27 argues that “[a] lack of clarity about a claimant's capabilities and why a claimant  
28

1 had not sought work is a clear and convincing reason that supports an ALJ's  
2 decision to not fully credit a claimant's allegations of debilitating impairments,"  
3 citing to *Tommasetti v. Astrue*, 533 F.3d 1035, 1040. ECF No. 15 at 18.

4 The Commissioner's reliance on *Tommasetti* is misplaced. There, the Ninth  
5 Circuit held that the ALJ, "rely[ing] on ordinary techniques of credibility  
6 evaluation," reasonably concluded that Tommasetti "was a vague witness with  
7 respect to the alleged period of disability and pain symptoms," based on  
8 Tommasetti's uncertainty and lack of insight. 533 F.3d at 1040 (internal citation  
9 and quotations omitted). *Tommasetti* thus stands for the wholly unrelated  
10 proposition that a *claimant's* "lack of clarity" may serve as a basis for undermining  
11 her testimony. It does not, as the Commissioner contends, allow the ALJ discount  
12 Plaintiff's allegations on the ground he "missed the opportunity" to testify. ECF  
13 No. 15 at 18.<sup>1</sup> The ALJ thus erred by discounting Plaintiff's allegations on this  
14 ground.

15 The ALJ accordingly erred by discounting Plaintiff's allegations.

## 16 VII. CONCLUSION

17 This case must be remanded because the ALJ harmfully misevaluated the  
18 medical evidence and Plaintiff's allegations. Plaintiff contends the Court should  
19 remand for an immediate award of benefits. Such a remand should be granted only  
20 in a rare case and this is not such a case. Plaintiff's allegations must be reweighed  
21 and this is a function the Court cannot perform in the first instance on appeal.  
22 Further proceedings are thus not only helpful but necessary. *See Brown-Hunter v.*  
23

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24  
25 <sup>1</sup> In any event, "one weak reason," even if supported by substantial evidence, "is  
26 insufficient to meet the specific, clear and convincing standard" for rejecting a  
27 claimant's allegations. *See Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014)  
28 (internal quotations and citation omitted).



1 *Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (noting a remand for an immediate  
 2 award of benefits is an “extreme remedy,” appropriate “only in ‘rare  
 3 circumstances’”) (quoting *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d  
 4 1090, 1099 (9th Cir. 2014)).

5 Because the ALJ misevaluated Plaintiff’s allegations, the ALJ will  
 6 necessarily need to make new step two and step three findings, which were based  
 7 on, among other things, the ALJ’s evaluation of Plaintiff’s allegations. For this  
 8 reason, the Court need not reach Plaintiff’s remaining assignments of error  
 9 concerning the other steps of the sequential evaluation process. *See PDK Labs.*  
 10 *Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (“[I]f it is not necessary to decide  
 11 more, it is necessary not to decide more.”) (Roberts, J., concurring in part and  
 12 concurring in the judgment).

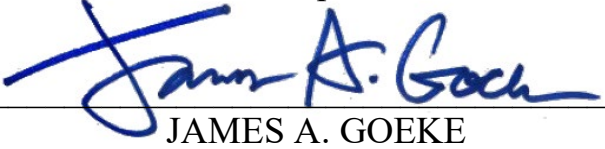
13 On remand, the ALJ shall develop the record; reassess Plaintiff’s testimony;  
 14 and reevaluate the steps of the sequential evaluation, as appropriate.

15 Having reviewed the record and the ALJ’s findings, the Commissioner’s  
 16 final decision is **REVERSED** and this case is **REMANDED** for further  
 17 proceedings under sentence four of 42 U.S.C. § 405(g).

18 Therefore, **IT IS HEREBY ORDERED:**

- 19 1. Plaintiff’s motion to reverse, **ECF No. 10**, is **GRANTED**.
- 20 2. Defendant’s motion to affirm, **ECF No. 15**, is **DENIED**.
- 21 3. The District Court Executive is directed to file this Order and provide  
 22 a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for  
 23 Plaintiff and the file shall be **CLOSED**. DATED September 23, 2024.



24   
 25 JAMES A. GOEKE  
 26 UNITED STATES MAGISTRATE JUDGE  
 27  
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